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10 UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 JOHNATHAN LESLIE ALLEN  
16 (a/k/a "Ghost"),

17 Defendant.

Case No.: 2:23-CR-00113-RMP-1

United States' Sentencing  
Memorandum

Sentencing Hearing:  
February 13, 2023, at 11:00 a.m.

18 Plaintiff United States of America, by and through Vanessa R. Waldref, United  
19 States Attorney, and David M. Herzog and Lisa M. Cartier-Giroux, Assistant United  
20 States Attorneys, hereby submits the United States' Sentencing Memorandum for  
21 Defendant Johnathan Allen. The United States recommends a Guidelines sentence of  
22 293 months in custody, 5 years of Supervised Release, no fine, no restitution, and a  
23 mandatory special assessment of \$400. The United States' position is based on the trial,  
attached memorandum, case exhibits, files, and records, and argument the Court permits.

24 Dated: February 6, 2024

Vanessa R. Waldref  
United States Attorney

26 s/ David M. Herzog

27 David M. Herzog  
28 Lisa M. Cartier-Giroux  
Assistant United States Attorneys

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. Introduction**

Defendant Johnathan Allen (“Defendant” or “Allen”) is a heroin, cocaine, fentanyl, and methamphetamine dealer who possesses, carries, and distributes firearms. A jury convicted him of engaging in a methamphetamine conspiracy, distributing methamphetamine, and possessing firearms on two separate occasions after having sustained prohibiting felonies.

Defendant’s criminal history is extensive and violent. During the conduct giving rise to his attempted robbery conviction, he grabbed and choked his victim in a car, held him by the throat, threatened to use brass knuckles on him, beat him on the head with brass knuckles until they were bloody, and participated in robbing him of a large amount of cash. In the years between that assault and his arrest in this case – setting aside the multiple residential burglaries, theft, and trespass convictions he sustained as a juvenile – Defendant has engaged in a cornucopia of criminal conduct. He has convictions for: theft, using the pretense of a prostitution date to rob a “John” at gunpoint (with an airsoft pistol), assault, resisting arrest, repeatedly giving a false name to police, possessing dangerous weapons including brass knuckles and a hunting knife while barricading himself in a house, possession of methamphetamine in connection with being in possession of stolen scooters and .45 caliber ammunition, and carrying a loaded large-frame revolver despite being a prohibited person by virtue of a prior felony. ECF No. 124 at ¶¶ 95-126. While in custody, he continued his violent and antisocial behavior by punching another inmate in the face and continuing to punch him while he was on the ground. *Id.* at ¶¶ 120-22.

Sanctions have not deterred him. In just the four-month period from October 1, 2022, through February 7, 2023, his Facebook account contains more than two thousand pages showing near-continuous illegal gun and drug trafficking, violent and threatening behavior, and other criminal activity. *See* Gov’t Exh. A.

1           However, none of the relevant conduct documented in his Facebook account  
2 has led to any criminal history points in his Presentence Investigation Report  
3 (“PSIR”). Without consideration of the conduct in those records, he falls in  
4 Criminal History Category V, based on 10 criminal history points. That  
5 calculation is proper under the Guidelines, but it significantly underrepresents his  
6 actual criminal history – not only because of the uncounted conduct in his  
7 Facebook account, but because it is based only on his adult convictions (several of  
8 which are now uncounted under *State v. Blake*, 197 Wn.2d 170 (2021)) and  
9 because it fails to take into account his possession of a loaded, chambered firearm  
10 at Northern Quest Casino at his arrest in February 2023.

11           Defendant’s willingness to carry loaded firearms, particularly while high on  
12 methamphetamine, endangers individuals around him. His ability to obtain and  
13 distribute multi-ounce quantities of methamphetamine, especially while having  
14 access to firearms, endangers the community around him. And his capacity for  
15 physical violence, both in and out of custody, endangers anyone with whom he  
16 disagrees. Taking into account the factors set forth at 18 U.S.C. § 3553(a),  
17 including his personal history of criminality and violent characteristics, the serious  
18 and unabated nature and circumstances of his offenses, his undeterrability, his lack  
19 of respect for the law, and his lifetime of antisocial conduct, as well as his relevant  
20 conduct, the United States respectfully submits that a sentence of 293 months, at  
21 the high end of the properly-calculated Guidelines range, is appropriate.

22           If Defendant – a person with a years-long pattern of criminal activity,  
23 including violence, who has been convicted of dealing large quantities of  
24 methamphetamine, and who was arrested while carrying a loaded, chambered gun  
25 at a casino – has not earned a sentence at the high end of the Guidelines, it is  
26 difficult to envision any defendant who would qualify. He has lived in Spokane all  
27 of his life and has chosen to commit his crimes in this community. Because of  
28 those choices, the time has now come to protect the Spokane community from him.

## II. Facts

The facts relevant to Defendant's convictions were adduced at trial before the Court in November 2023 and are set forth in the relevant paragraphs of the Offense Conduct section of the PSIR. ECF No. 124, at ¶¶ 11-66.

The facts are not complicated. On October 27, 2022, Defendant engaged in multiple text and Facebook communications with codefendants Joshua Fisher ("Fisher") and Quinton Brown ("Brown") to obtain at least six "zips," or ounces, of methamphetamine to sell to Fisher's buyer "Jay," who, unbeknownst to any of the coconspirators, was an undercover agent ("UCA") working with the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"). Defendant used Facebook to set up a meeting with Brown to obtain the methamphetamine, and Defendant then accompanied Fisher to a Wal-Mart in Spokane Valley. In the parking lot at Wal-Mart, Fisher got into the UCA's vehicle to sell the methamphetamine to the UCA. Immediately thereafter, Defendant instructed Fisher to go to an apartment on Pines in Spokane Valley, where he picked up a Ruger 9mm firearm and came back outside. The next day, Defendant offered Fisher the ability to sell "the Ruger" to the UCA. He then brought a Ruger 9mm firearm to the Spokane Transit Authority bus plaza in downtown Spokane, where he gave it to Fisher to sell to the UCA. Fisher, Allen, and Brown (along with Austin Watson, who did a standalone methamphetamine deal with Fisher) were indicted in January 2023, and a warrant was issued for Defendant's arrest. On February 7, 2023, Defendant was arrested on the gaming floor of the Northern Quest Casino just outside Spokane, with a loaded, chambered 9mm firearm in the pocket of his sweatshirt.

Pretrial litigation resulted in the severance of the three original codefendants (Fisher, Brown, and Watson), each of whom accepted responsibility for his own conduct, pleaded guilty, and is awaiting sentencing. The Court also dismissed without prejudice the original indictment (23-CR-00002-RMP) for a violation of the Speedy Trial Act, leading to a new indictment charging Allen alone.

In the above-captioned case (23-CR-00113-RMP), Allen proceeded to trial on four counts: one count of conspiracy to distribute methamphetamine with Fisher and Brown, one count of methamphetamine distribution for the drug deal on October 27, 2022, and two counts of being a felon in possession of a firearm or ammunition on October 28, 2022, and February 7, 2023, respectively. After four days of trial testimony and several hours of deliberations, the jury returned guilty verdicts on all counts.

### III. The Presentence Report

For purposes of calculating the appropriate range under the United States Sentencing Guidelines (the “Guidelines”), the United States concurs with the United States Probation Office that the following Guidelines calculations apply:

Offense Level / Enhancements	Level/Adj.	Guidelines Section
Between 150-500 grams of methamphetamine	32	U.S.S.G. § 2D1.1(a)(5), (c)(4)
Possession of a dangerous weapon (firearm)	+2	U.S.S.G. § 2D1.1(b)(1)
Final adjusted offense level	34	

ECF No. 124, ¶¶ 72-80.

The Probation Officer has correctly concluded that Defendant’s criminal history computation includes 10 total criminal history points, placing him in Criminal History Category V. ECF No. 124, ¶ 127. In Category V and offense level 34, Defendant’s range is 235-293 months in custody. ECF No. 124, ¶ 184. Defendant’s convictions on Counts 1 and 2 each carry a mandatory minimum sentence of 120 months, which the Court may run concurrently or consecutively. *See* 18 U.S.C. § 3584. The Court must impose a term of Supervised Release that may be up to life, but cannot be fewer than five years. ECF No. 124, ¶ 184. Defendant has no assets or income but has two children to support; the United States does not seek any fines or restitution beyond the \$400 special assessment.

#### IV. Defendant's Objections to the Presentence Report

In response to the Probation Officer's draft PSIR, Defendant requested a number of corrections and additions. The United States opposed each of these requests with significant briefing and citations to trial exhibits. ECF No. 133. The United States stands on that record but now must make a few additional points, necessitated by Defendant filing ECF No. 138, a document characterized as a reply to the United States' opposition.

First, with regard to Defendant's Facebook records, the United States continues to be puzzled by Defendant's insistence that because the Court limited *the jury's* consideration of Defendant's Facebook evidence at trial under Federal Rules of Evidence 403 and 404(b), the *Court* should be limited in considering Defendant's Facebook evidence at sentencing.

Courts receive all kinds of information at sentencing that juries never consider when they are determining innocence or guilt. Indeed, the Court's mandate at sentencing is to impose a fair and just sentence after considering all of the information it can about Defendant as a whole person. *See* 18 U.S.C. § 3553(a). This information includes not only his offense conduct and respect for the law, but also his personal history and characteristics, his prior convictions and criminal history, his methamphetamine use, his family circumstances and upbringing, his educational and employment record, and his ability to pay financial penalties. Defendant's Facebook records provide contemporaneous first-person insight into what he was thinking, saying, and doing. In the language of the sentencing statute, his Facebook communications demonstrate the seriousness of his offense conduct, his relevant conduct, his lack of respect for the law, the need to deter him, and his personal history and characteristics. Accordingly, the Court not only *can* consider his Facebook communications, but *should* consider them in fashioning a fair and just sentence that takes into account the whole person before it.

1 Defendant asserts that despite the fact that the jury believed beyond a  
2 reasonable doubt that he used Facebook to set up the charged methamphetamine  
3 deal, the Court should simply ignore the relevant conduct of his other drug dealing,  
4 violence, retribution, and gun crimes – all of which come from the same Facebook  
5 account. ECF No. 138 at 2-3 (referencing PSIR ¶¶ 61-66). Defendant claims that  
6 because his sister Shivara Hamm (ne Allen) testified that she believed she had  
7 communicated with people other than Defendant on his Facebook accounts. *Id.*  
8 But the messages authored by the Facebook user “John Allen,” contain information  
9 consistent with Defendant John Allen’s actual identity information, which he often  
10 gave in the messages themselves, including his use of the 7455 phone number,  
11 messages about “John Allen’s” location on dates and places where Defendant was  
12 seen by law enforcement (Spokane Valley on October 27, 2022, and Northern  
13 Quest Casino on February 7, 2023), his lack of a vehicle and need for rides, his  
14 parental status, his residence information, his familial relationships, and other  
15 identifying information. The substantive information in the messages is also cross-  
16 corroborating and consistent – including Defendant’s frequent use of the exact  
17 same phrase for the sale of “fire ass clear” (that is, high-quality methamphetamine)  
18 at specified prices. Based on context, the specific language used, the identifying  
19 indicia of Defendant John Allen as Facebook user “John Allen” and “Ghost,” and  
20 the messages themselves, the overall import of Exhibit A (the 2,000 pages of  
21 Defendant’s Facebook account referenced in PSIR ¶¶ 61-66) is that the United  
22 States has established by a preponderance of the evidence that the messages in  
23 Exhibit A, like the Facebook messages introduced at trial, are Defendant’s.

24 Notably, Defendant’s sister also admitted that she communicated with  
25 Defendant on this Facebook account, as demonstrated in trial Exhibit 304  
26 (communications between Defendant and Ms. Hamm). Thus, if Defendant has a  
27 basis to challenge any of the specific statements attributed to the Facebook user  
28 “John Allen” in Exhibit A as not genuinely having come from Defendant



1 Johnathan Leslie Allen, aka “Ghost,” the United States requests that Defendant  
2 identify those particular statements and his particularized basis for asserting that  
3 they did not come from Defendant John Allen, so the United States can fairly  
4 respond.

5 Finally, the United States submits that Defendant’s proposed requirement  
6 that a firearm and drugs *must* be “bundled” for the Court to apply the two-level  
7 enhancement under U.S.S.G. Section 2D1.1(b)(1), is inconsistent with *United*  
8 *States v. Gomez*, 6 F.4th 992, 1008-10 (9th Cir. 2021) and other Ninth Circuit  
9 precedent.

10 As *Gomez* itself sets forth, the enhancement is applicable “if a dangerous  
11 weapon (including a firearm) was possessed.” *Id.* (citing Section 2D1.1(b)(1)  
12 (cleaned up)). In *Gomez*, the enhancement obviously applied, because “the sale of  
13 the firearm and methamphetamine were bundled together.” *Id.* at 1010. But  
14 contrary to Defendant’s narrow position that such bundling is *required* for the  
15 enhancement to apply, neither *Gomez* (nor any other case cited by Defendant or  
16 located by the United States) actually requires a firearm and drugs to be bundled  
17 together, on the Defendant’s person, or even in the same location, for the  
18 enhancement to apply.

19 Instead, as the Ninth Circuit explained at length in *Gomez*, that court  
20 “interpret[s] the § 2D1.1(b)(1) enhancement broadly”:

21 We have held that possession of the firearm may be actual or  
22 constructive, *United States v. Lopez-Sandoval*, 146 F.3d 712, 714–15  
23 (9th Cir. 1998), and that the firearms and drugs need not “be found in  
24 proximity to each other,” *United States v. Willard*, 919 F.2d 606, 610  
25 (9th Cir. 1990). Even when defendants were arrested miles away from  
26 the firearms stored at their homes or places of business, we held that  
27 the defendants possessed weapons during the commission of the drug-  
trafficking offenses for purposes of this sentencing enhancement.  
*Lopez-Sandoval*, 146 F.3d at 715; *see also United States v. Stewart*, 926  
F.2d 899, 901–02 (9th Cir. 1991).

28 *Gomez*, 6 F.4th at 1008.



1 Because the enhancement is broadly applied, and because an enhancement  
2 under § 2D1.1(b)(1) is appropriate “based on all of the offense conduct, not just the  
3 crime of conviction” under *United States v. Boykin*, 785 F.3d 1352, 1364 (9th Cir.  
4 2015), the Ninth Circuit concluded that it was appropriate to “determine whether  
5 any of Gomez’s underlying offense conduct was sufficient to justify the  
6 enhancement.” *Id.* at 1009. In *Gomez*, consideration of all of the defendant’s  
7 conduct caused the Ninth Circuit to reject his argument that it was “clearly  
8 improbable that the weapon was connected with the offense,” under U.S.S.G.  
9 § 2D1.1(b)(1), comment n.11(A), where he had sold an unloaded gun to his drug  
10 buyer. *Id.*

11 Here, likewise, Defendant makes the same argument that the enhancement  
12 should not apply because on October 27, 2022, his “shooter” – that is, the Ruger  
13 9mm pistol – was at the apartment complex on Pines while he conducted his drug  
14 deals in Brown’s car and the Wal-Mart parking lot a few miles away. *See* ECF No.  
15 132 at 3-5; ECF No. 138, at 3-4. According to Defendant, because he did not  
16 possess the drugs and gun at the same time in the same place, they were not  
17 “bundled” together and therefore it is clearly improbable that the weapon was  
18 connected with the drug offense. *Id.*

19 But the Ninth Circuit has already foreclosed this argument, not only in  
20 *Lopez-Sandoval* and *Willard*, under which the enhancement applies to actual and  
21 constructive possession of guns and to guns recovered miles away from drug deals,  
22 *see supra*, but in *Gomez* itself, which held that “the application note also states that  
23 this enhancement ‘reflects the increased danger of violence when drug traffickers  
24 possess weapons.’” *Gomez*, 6 F.4th at 1008-09 (citing U.S.S.G. § 2D1.1(b)(1)  
25 comment n.11(A)).

26 Accordingly, the Ninth Circuit held in *Gomez*:

27 We have also interpreted this application note broadly. In determining  
28 whether the weapon “was connected with the offense,” *id.*, we have  
concluded that the “offense” in this context refers to “the entire course

1 of criminal conduct,” not just the crime of conviction, *Willard*, 919 F.2d  
2 at 609–10. This is consistent with the broad language of § 1B1.3, which  
3 provides that specific offense characteristics such as § 2D1.1(b)(1) take  
4 into account all acts and omissions that occurred “during the  
5 commission of the offense of conviction, in preparation for that offense,  
6 or in the course of attempting to avoid detection or responsibility for  
7 that offense.” U.S.S.G. § 1B1.3(1)(B). We have also held that the fact  
8 that a firearm was unloaded does not make it “clearly improbable that  
9 the weapon was connected to” the drug offense. *Lopez-Sandoval*, 146  
10 F.3d at 716 (cleaned up).

11 *Id.* at 1009.

12 Where a firearm *is* bundled together with a drug deal, as in *Gomez*, the  
13 enhancement clearly applies. But because the enhancement is “based on all of the  
14 offense conduct, not just the crime of conviction,” *Gomez*, 6 F.4th at 1009, quoting  
15 *Boykin*, 785 F.3d at 1364, it *also* applies where the Court determines that “any of  
16 [Defendant’s] underlying offense conduct was sufficient to justify the  
17 enhancement.” *Id.* (emphasis supplied).

18 Here, as the United States set forth at length in ECF No. 133, immediately  
19 before meeting up with Fisher to go do the methamphetamine deals on October 27,  
20 2022, Defendant sent a Facebook message in which he was specifically looking for  
21 a ride to Spokane Valley “go pick up [his] shooter on Pines.” *See* ECF No. 133, at  
22 13-14; Trial Exhibit 310 (Facebook message). Then, immediately after leaving the  
23 drug deal at Wal-Mart, Defendant instructed Fisher to take him to the apartment on  
24 Pines, where he picked up a Ruger 9mm. ECF No. 133, at 13-14. And as  
25 Paragraph 66 of the PSIR notes, on October 25, 2022, two days *before* he picked  
26 up the Ruger 9mm firearm at the apartment on Pines, Defendant was already  
27 indicating on Facebook that he wanted to get his “thang thang” (slang for a  
28 firearm). ECF No. 124 at ¶ 66.

Thus, “based on all of the offense conduct, not just the crime of conviction,”  
*Gomez*, 6 F.4th at 1009, *quoting Boykin*, 785 F.3d at 1364, it is clear that on  
October 27, 2022, Defendant constructively possessed, and went to get, the Ruger.

1 The enhancement applies. As *Gomez* itself held, “[u]nder our case law, the  
2 government does not have to establish that the defendant possessed the firearm for  
3 the purpose of protecting or facilitating the drug transaction. Indeed, the firearms  
4 need not be ‘involved in the crime of conviction.’” 6 F.4th 1010 (quoting *Willard*,  
5 919 F.2d at 609). Whether the Ruger was loaded is irrelevant for purposes of  
6 applying the enhancement. *Id.* (“Nor is it relevant that the firearms were  
7 unloaded.”) (quoting *Lopez-Sandoval*, 146 F.3d at 714–15).

8 Accordingly, the United States respectfully submits that the two-level  
9 firearm enhancement set forth at U.S.S.G. § 2D1.1(b)(1) and applied by the  
10 Probation Officer, is appropriate on these facts. Like *Gomez*, this is not a case in  
11 which a drug dealer’s possession of a firearm is separate from the drug deal itself,  
12 like a “hunting rifle locked in a closet,” *Gomez*, 6 F.4th at 1010 (citing App.  
13 N.11(A)). Even though there is no “bundling” requirement in the Ninth Circuit as  
14 Defendant asserts, he did in fact “bundle” his gun and drug conduct by going to  
15 Spokane Valley on October 27, 2022, to do a drug deal *and* “go pick up [his]  
16 shooter” as he indicated in Facebook messages from that night.

17 Finally, as a matter of public policy, this case and Defendant’s repeated  
18 willingness to obtain, possess, and carry guns while engaging in drug deals  
19 demonstrates why the safety concerns articulated in Application Note 11(A) and  
20 *Gomez* make sense: this enhancement “reflects the increased danger of violence  
21 when drug traffickers possess weapons.” *Gomez*, 6 F.4th at 1009 (citing App. Note  
22 11(A)). The United States respectfully submits that the enhancement applies here,  
23 as the Probation Office concluded in the PSIR.

## 24 **V. The United States’ Sentencing Recommendation**

25 In light of Defendant’s life of criminality, demonstrated acts of violence,  
26 ongoing and significant drug dealing, dangerousness and repeated possession of  
27 loaded firearms (including while using methamphetamine daily), underrepresented  
28 criminal history, and lack of remorse or acceptance of responsibility, the United

1 States respectfully recommends a Guidelines sentence of 293 months in custody, 5  
2 years of supervised release, no fine, no restitution, and a mandatory special  
3 assessment of \$400. The United States acknowledges that this is a significant  
4 sentence and respectfully submits that it is appropriate but no greater than  
5 necessary to achieve the statutory goals of sentencing and factors set forth at 18  
6 U.S.C. § 3553(a).

7 **A. Defendant's Serious Offense and Lack of Respect for the Law**

8 Defendant's Guidelines range is based on three things: the criminal history  
9 points he earned based on his prior convictions and sentences (10 points), the large  
10 quantity of methamphetamine that he conspired to distribute and distributed in  
11 October 2022 (offense level 32), and his constructive possession of a Ruger 9mm  
12 pistol on October 27, 2022 (2-level enhancement under Guidelines Section 2D1.1).  
13 All of that misconduct is serious, and all of it warrants serious punishment.

14 But that analysis also severely understates the actual dangerousness of  
15 Defendant's criminal conduct. In February 2023, completely separate from his  
16 methamphetamine and firearm conduct in October 2022, Defendant knowingly and  
17 illegally possessed a different loaded 9mm firearm, with a bullet in the chamber, in  
18 the pocket of his sweatshirt in the middle of the afternoon at a busy casino.

19 Because his drug quantity from October 2022 was significant enough to  
20 yield offense level 32, and his felon-in-possession offense level from February  
21 2023 is more than 9 levels lower (offense level 20, based on possession of a single  
22 firearm after one conviction for attempted robbery, a crime of violence), the  
23 Guidelines advise the Court to disregard his February 2023 firearm possession at  
24 Northern Quest Casino in calculating his offense level under the grouping analysis  
25 set forth at Section 3D1.4. Thus, what was likely Defendant's most immediately  
26 dangerous charged conduct – walking around a casino with a loaded, chambered  
27 firearm while he was using methamphetamine daily – actually goes unaddressed by  
28 the Guidelines' offense level calculations.

1 To accommodate situations like this, the same section of the Guidelines,  
2 Section 3D1.4(c), suggests that the Court impose a high-end sentence to take into  
3 account dangerous misconduct that is otherwise unaddressed by grouping analysis.  
4 In the language of the Guidelines, a Group 9 or more levels less serious (the  
5 firearm at the casino) than the Group with the highest offense level (the  
6 methamphetamine from October 2022) “may provide a reason for sentencing at the  
7 higher end of the sentencing range for the applicable offense level.” U.S.S.G.  
8 § 3D1.4(c). Here, a just sentence should take into account Defendant’s conduct at  
9 the casino, which is one of several reasons the United States is seeking a sentence  
10 at the high end of the properly-calculated Guidelines range of 235-293 months.

11 A sentence lower than the high end of the Guidelines range would fail to  
12 hold Defendant accountable for seriously endangering others (and himself) by  
13 carrying a loaded firearm in the pocket of his sweatshirt at the casino. At that time,  
14 by his own admission, Defendant was using methamphetamine daily. ECF No.  
15 124 at ¶ 148. With a bullet in the chamber, myriad circumstances could have led  
16 to tragedy: if Defendant had tripped, been bumped into, or inadvertently dropped  
17 the gun, it could have discharged. If he was indeed high on methamphetamine that  
18 day while carrying a loaded firearm, one can only shudder at what might have  
19 happened if law enforcement had not intervened before a dealer had a chance to  
20 deal him a bad hand, or he lost at the slots, or someone treated him disrespectfully  
21 on the gaming floor. In short, it is a miracle that nothing truly tragic happened that  
22 day, thanks to proactive law enforcement work, communication, and a safe arrest.

23 Defendant’s sentence should account for what he did at the casino. But his  
24 criminal history is meaningfully understated in other ways, too. Before he was an  
25 adult, he had engaged in five incidents in which he unlawfully entered a building  
26 or home, burglarized the home, or stole something from another person. ECF No.  
27 124, ¶¶ 84-94. In one incident, he broke into a house through a window and stole a  
28 rifle and ammunition, electronics, and jewelry; his fingerprints were on the jewelry

1 box. *Id.* at ¶ 87. Two days later, he kicked in the window of another home to steal  
2 electronics and jewelry; again his fingerprints were on a jewelry box. *Id.* at ¶ 90.  
3 Four days after that, in what must have been a terrifying experience for his victim,  
4 he broke into a home to burglarize it, was interrupted by the homeowner, and fled,  
5 dropping a crowbar. *Id.* at ¶ 92. He also stole an MP3 player from one student and  
6 stole and sold the cell phone of another. *Id.* at ¶ 94.

7 Although certainly frightening to the people who were robbed, perhaps some  
8 of Defendant's juvenile misconduct can be attributed to poor youthful decision-  
9 making – and he received minimal sanctions that do not count against his criminal  
10 history. But neither the experience of being arrested and detained, nor community  
11 custody, nor community service, nor being on probation, nor the actual sanctions  
12 imposed, did anything to deter Defendant. As soon as he turned 18, he graduated  
13 to more serious, violent crime: what appears in his criminal history as “attempted  
14 first degree robbery” consisted of choking out and beating his victim bloody with  
15 brass knuckles while robbing him. *Id.* at ¶¶ 95-99. For this crime he was  
16 sentenced to 30.75 months and accrued three criminal history points.

17 What matters more to the United States than the length of his sentence is that  
18 he resolved to rob someone with a group of other people, and had no reservations  
19 about committing the robbery in a way that was cruel, violent, and unnecessary to  
20 commit a simple robbery. He punched his victim, held him by the throat, and  
21 repeatedly beat him with brass knuckles until “he was bleeding from his face and  
22 blood was all over the inside and outside of his vehicle.” *Id.* at ¶ 99.

23 For a theft conviction in 2011 for which details are unavailable, he was  
24 originally sentenced to 45 days suspended, but presumably violated his terms of  
25 release, because he ended up serving 44 days. *Id.* at ¶ 100.

26 Then, in 2012, while admittedly acting as “security” for his girlfriend's  
27 “escort meetings” (plural), Defendant engaged in the kind of robbery that can, and  
28 often does, escalate into serious violence. To rob someone, he and his girlfriend



1 set up a prostitution date on Backpage.com. *Id.* at ¶¶ 102-107. Defendant  
2 accompanied his girlfriend to the encounter near Pullman, Washington. *Id.* Once  
3 the customer had given them \$240 for the commercial sex act, Defendant and the  
4 woman attempted to disengage and leave, causing the customer to come outside  
5 with a folding knife. *Id.* Defendant pointed an airsoft pistol at him “that was  
6 designed to look like a Glock handgun,” and left him \$50. *Id.* Defendant and his  
7 girlfriend made a number of false statements to the police, including Defendant  
8 giving the false name “Christopher Allen.” *Id.*

9 For this conduct, Defendant was convicted of attempted promotion of  
10 prostitution in the second degree, unlawful display of a weapon, and making a false  
11 statement to a public servant. *Id.* He was sentenced to 364 days, with all but 30  
12 days suspended. *Id.* Because the sentence was less than a year, he received only  
13 one criminal history point for purposes of the Guidelines. *Id.*

14 The United States submits that the short length of that sentence significantly  
15 understates not only the inherent dangerousness of Defendant’s conduct, but the  
16 sexual, emotional, and psychological harm inherent to “providing security” for a  
17 commercial sex transaction that would have constituted attempted human  
18 trafficking in violation of federal law if it had involved force, fraud, or coercion.  
19 Receiving a single criminal history point for this conduct dramatically understates  
20 Defendant’s meaningful criminal history and respect for the law.

21 After another theft conviction in 2015 for which he was sentenced to 44 days  
22 in custody, *id.* at ¶ 108, Defendant trespassed into a home, where he barricaded  
23 himself and came out only when law enforcement told him a K9 was en route. *Id.*  
24 at ¶¶ 110-13. When he came out he again had brass knuckles, along with a hunting  
25 knife, ziplock baggies, and methamphetamine, and again lied to officers about his  
26 identity. *Id.* This conduct, which also garnered only a single criminal history  
27 point, demonstrates that the methamphetamine distribution conduct on which he  
28 was convicted in this case was not his first go-round with distributing



1 methamphetamine. Coupled with his earlier lies to law enforcement about his  
2 identity, and his subsequent conviction for fleeing from police and resisting arrest  
3 in 2016, *id.* at ¶¶ 114-16, this conduct also evinces his lack of respect for the law.

4 Then, in 2018, while in custody at Geiger, Defendant punched another  
5 inmate in the face and continued punching him while he was on the ground. *Id.* at  
6 ¶ 122. This constituted another violent assault for which Defendant has received  
7 only one criminal history point.

8 A few months later, at the end of 2018, during the period in which he  
9 acknowledges he was using methamphetamine daily, Defendant was arrested on a  
10 warrant after attempting to flee from police. *Id.* at ¶¶ 123-25. Undeterred by his  
11 prior sanctions or his attempted robbery conviction – which prohibited him from  
12 possessing a firearm – he was riding around on a bicycle with a loaded firearm in  
13 his belt. *Id.* He was convicted and sentenced to 18 months in custody for unlawful  
14 possession of the firearm, and accrued three criminal history points for that  
15 conviction.

16 What concerns the United States more than the points he received is how  
17 similar his 2018 conduct was to his 2023 conduct at Northern Quest, where he  
18 carried a loaded firearm while he was admittedly a daily methamphetamine user.  
19 Defendant appears to be undeterrable, and has no compunction about carrying  
20 loaded weapons around others, regardless of his prior convictions or whether he is  
21 using methamphetamine. That is dangerous conduct from which the public  
22 deserves to be kept safe.

23 Defendant's criminal history is further understated because of the windfalls  
24 he received following the Washington Supreme Court's decision in *State v. Blake*,  
25 197 Wn.2d 170 (2021). In 2017, two motor scooters were suspected to have been  
26 stolen by "Ghost" (Defendant's moniker). *Id.* at ¶¶ 117-19. When law  
27 enforcement contacted Defendant on a scooter with a punched-out ignition panel,  
28 he initially refused to provide his name but admitted the scooters were not his. *Id.*

1 Eventually he identified himself and was arrested on a DOC warrant and  
2 was searched incident to arrest. *Id.* Police found methamphetamine and drug  
3 paraphernalia and a BB gun; they did not locate a firearm, but Defendant had a .45  
4 caliber magazine loaded with ammunition. *Id.*

5 Defendant was charged and convicted *only* of simple possession of  
6 methamphetamine, which was a common way to resolve cases in the pre-*Blake* era.  
7 He was sentenced to 81 days. *Id.* But because four years later *Blake* retroactively  
8 reversed all simple drug possession convictions in Washington, his 2017 drug  
9 conviction now yields zero criminal history points. *Blake* means that Defendant,  
10 who could have been charged with various non-drug offenses in 2017, receives no  
11 criminal history points for any of his conduct that day – which in turn, makes his  
12 criminal history understated. He was not charged with or convicted of possession  
13 of stolen property, unlawful possession of ammunition, lying to an officer, or any  
14 other potentially point-generating conduct; he resolved all of his criminal conduct  
15 with a single charge that unforeseeably would later be vacated by *Blake*.


16 Likewise, he sustained 2016 and 2018 drug convictions that were resolved  
17 without charges for possession of a stolen vehicle or any other potential point-  
18 generating convictions and subsequently vacated by *Blake*. *Id.* at ¶¶ 132-37.  
19 Because it is impossible to go back in time to charge non-drug conduct that would  
20 have survived *Blake*, there is no way to calculate Defendant’s true point-generating  
21 conduct. The United States seeks a high-end sentence in this case in part because  
22 *Blake* has caused Defendant’s overall criminal history to be understated.

23 Finally, in addition to everything set forth above, Defendant’s Facebook  
24 records also demonstrate that his criminal history is understated: his relevant  
25 conduct includes numerous uncharged drug deals and gun crimes. To wit, during  
26 just the four months for which the United States obtained Defendant’s Facebook  
27 account, he communicated with at least 15 individuals, in no fewer than 55  
28 communications, about distributing drugs. ECF No. 124 at ¶ 61.

Other than the charged drug deal proven in part by Defendant's Facebook communications with Quinton Brown on October 27, 2022 (trial Exhibit 312), law enforcement obviously did not apprehend Defendant for any of these other drug interactions. But Defendant was dealing in heroin, cocaine, fentanyl-laced pills, and methamphetamine, *id.* at ¶ 62, which is relevant – and troubling – conduct. The United States submits that paragraphs 61-66 of the PSIR demonstrate not only Defendant's familiarity with gun and drug dealing and specific distribution language and conduct, but his willingness to use violence and retaliate. Notably, paragraph 66 references Defendant indicating to another person that he wants to get his "thang thang" (slang for a firearm) two days before he picked up "the Ruger" 9mm firearm at an apartment on Pines on October 27, 2022.

Defendant's charged and relevant conduct is unquestionably serious, and merits a significant sentence. He is a criminal Jack-of-all-trades – he has engaged in illegal drug and gun conduct, to be sure, but has also robbed houses and people, and engaged in violence in and out of prison to the detriment of this community.

In terms of employment, the PSIR indicates that he has not been employed since 2020 – but that is true only if drug dealing and benefit fraud do not count. The Court may recall trial exhibits 307A and 309, which showed a Facebook message from Defendant indicating that he wanted to sell his public benefits card:

Conversation Thread - {0} - 353				
Session	Date/Time	Sender ID	Sender Name	Message
7549	10/18/2022 09:32:17	100076258441367	John Allen	You sent a photo.  <a href="#">attachments/0661763232.jpg</a>
7550	10/18/2022 09:37:10	100076258441367	John Allen	You sent a video. <a href="#">unified_message_423385043282125.mp4</a>
7551	10/18/2022 10:27:20	100076258441367	John Allen	I got a new card 4sale,, do you want 2buy it

Trial Exhibit 307A.

Defendant argues that he was not necessarily the user of the “John Allen” Facebook account, but the user of the “John Allen” Facebook account appears to have received mail that the Washington State Department of Health and Social Services had sent Defendant Johnathan L. Allen. The close-up image of the letter included the specific value of the public benefits on the card. Presumably, Defendant was trying to sell the card for immediately-usable cash, at a figure lower than the actual value of the benefits (so his buyer would also be advantaged):

10/18/22 JOHNATHAN L ALLEN

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SPOKANE MAPLE CSO  
PO BOX 11694  
TACOMA WA 98411-6694

WASHINGTON STATE  
Department of Social  
& Health Services

Phone #  
TTY/TDD # 800-833-6384  
Toll Free # 877-501-2233

Client ID # 002459976

10/18/22

JOHNATHAN L ALLEN  
2004 E 11TH AVE  
SPOKANE WA 99203-3513

Dear JOHNATHAN L ALLEN

You will receive the following benefits:

	Begin Date	End Date
Basic Food Assistance (federal)	10/18/22	09/30/23
	First Issuance	Second Issuance
	\$562	
Basic Food Assistance (federal)	\$402.00	\$281.00
		Future Issuances
		\$281.00

Your first food benefits are for the months of 10/2022 through 11/2022.

You will receive benefits again on 12/06/22.

Your food benefits will be available on day 6 of each month.

We will add your benefits to an Electronic Benefits Transfer (EBT) account.

The following persons receive federal Basic Food benefits.

JOHNATHAN L ALLEN

Trial Exhibit 309.

1       Against this overall landscape, it is difficult to conclude that Defendant has  
2 any respect for the law. When coupled with his recidivist criminal history, serious  
3 drug dealing and gun misconduct in this case, and refusal to learn any lessons from  
4 his prior significant custodial sentences, it is clear that a sentence that promotes  
5 respect for the law is important here. *See* 18 U.S.C. § 3553(a)(2)(A). Defendant  
6 has earned a sentence at the high end of his Guidelines range: 293 months.

7       **B. Defendant's Personal History and Characteristics**

8       Defendant may seek to articulate facets of his personal history and  
9 characteristics as mitigating. But the undisputed facts remain: his personal history  
10 and characteristics include significant criminality, repeated uses of violence, lack  
11 of respect for other people, and willingness to sell drugs to make easy money.

12       The United States certainly has compassion for any young person who is put  
13 into the foster care system at only nine years old, and spends the next several years  
14 without a stable home. ECF No. 124 at ¶¶ 141-44. But one needs to look no  
15 further than Defendant's own siblings to find examples of people who managed to  
16 make good choices throughout their lives despite having gone through the same  
17 struggles Defendant did. *Id.* at ¶¶ 142-43. Each of Defendant's siblings is now a  
18 law-abiding member of the Spokane community who does not distribute drugs or  
19 sell firearms. *Id.* at ¶ 142. Sadly, however, Defendant's siblings (who know him),  
20 have had to take steps to ensure that he stays away from their children when he is  
21 using, for the children's safety. *Id.* So to the extent that Defendant asserts that it is  
22 meaningfully mitigating that his upbringing was difficult, it is also important to  
23 recognize that it is Defendant himself who has made repeated choices over time  
24 that have put him where he is – unlike his similarly-situated siblings. In short,  
25 there is nothing in this PSIR that is significantly mitigating with regard to  
26 Defendant's repeated choices to be a drug dealer, rob people's homes, engage in  
27 violence and criminal misconduct, and illegally carry loaded guns. A high-end  
28 Guidelines sentence is consistent with his personal history and characteristics.

1           **C.     Just Punishment, Deterrence, and Protection of the Public**

2           Defendant’s significant drug conduct, especially when coupled with his  
3 violent history and willingness to carry loaded guns around, demands serious  
4 punishment. It is also vitally important to deter both him and others from engaging  
5 in conduct that endangers the public. In this case, a sentence of 293 months is  
6 appropriate, but no greater than necessary, to accomplish these goals. Remarkably,  
7 given the volume of his criminal conduct and the resulting sanctions, nothing has  
8 deterred Defendant from committing additional criminal acts. He and others who  
9 are faced with similar choices to deal drugs and use violence need to be  
10 disincentivized by the knowledge that if they get caught, there are serious  
11 repercussions – especially if their conduct also includes carrying around loaded  
12 firearms after multiple felony convictions.

13           It is fair to the people of the Spokane community – from the Spokane Valley  
14 Wal-Mart to the STA bus plaza downtown, from the McDonalds on Indiana and  
15 Monroe to the Northern Quest Casino in Airway Heights – that they get to live free  
16 of Defendant’s illegal drugs and guns while he serves a significant sentence for his  
17 crimes against them.

18           **D.     Avoidance of Unwarranted Sentencing Disparities**

19           The best way to ensure consistent sentences for similarly-situated  
20 Defendants across courtrooms, districts, and the country is for courts to apply the  
21 Sentencing Guidelines in the same manner everywhere. Indeed, one of the primary  
22 goals of the Guidelines is to create a normative framework so that people with  
23 similar conduct and history are treated similarly in the federal criminal justice  
24 system, whether their crimes take place in Utah, Iowa, or Washington. *United*  
25 *States v. Saeteurn*, 504 F.3d 1175, 1181 (9th Cir. 2007) (recognizing agreement  
26 among the Circuit Courts that that “Congress’s primary goal in enacting  
27 § 3553(a)(6) was to promote national uniformity in sentencing”); *United States v.*  
28 *Guerrero-Velasquez*, 434 F.3d 1193, 1195 n.1 (9th Cir. 2006) (recognizing that the



Guidelines “help to maintain uniformity in sentencing throughout the country”); *see United States v. Boscarino*, 437 F.3d 634, 638 (7th Cir. 2006) (“Sentencing disparities are at their ebb when the Guidelines are followed, for the ranges are themselves designed to treat similar offenders similarly.”).

That principle maintains its vitality where Guidelines sentences are high. There is no principled reason for Defendant to be in a meaningfully different position from a similarly-situated federal Defendant somewhere else in the United States who likewise has 10 criminal history points (some from acts of violence), deals the same quantity of methamphetamine while constructively possessing a firearm, has an understated criminal history, and is arrested with a loaded, chambered gun in a busy public place while using methamphetamine daily. The United States respectfully submits that the best way to avoid unwarranted sentencing disparity while accounting for *all* of Defendant’s conduct is to sentence him within the Guidelines, and to the high end of that Guidelines range.

#### **E. Fine, Special Penalty Assessment, and Restitution**

Given Defendant’s economic circumstances and the nature of the offense, the United States does not recommend a fine or the payment of restitution. ECF No. 124, ¶¶ 153-54. A special penalty assessment of \$400 is required.

#### **VI. Conclusion**

The United States recommends that the Court impose a Guidelines sentence of 293 months, to be followed by 5 years of supervised release, no fine, no restitution, and a mandatory special assessment of \$400.

Dated: February 6, 2024

Vanessa R. Waldref  
United States Attorney

s/ David M. Herzog  
David M. Herzog  
Lisa M. Cartier-Giroux  
Assistant United States Attorneys



**CERTIFICATE OF SERVICE**

I hereby certify that on February 6, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system.

s/ David M. Herzog  
David M. Herzog  
Assistant United States Attorney